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21 November 2016

BY ECF

The Honorable Joan M. Azrack,
U.S. District Court Judge,
United States District Court,
Eastern District of New York,
225 Cadman Plaza East,
Brooklyn, New York 11201.

Dear Hon. U.S. District Court Judge Azrack :

**Re : Louis Flores v. United States Department of Justice
No. 15-CV-2627 (Azrack, J.) (Mann, M.J.)**

I would like to correct the record of the most egregious misrepresentations made in Defendant's filing of its Response to Plaintiff's Objection to the Report and Recommendation. (Dkt. No. 51).

Defendant U.S. Department of Justice willfully ignores that Plaintiff was compelled to file a Second FOIA Request. (Dkt. No. 51 at 2, n.1). Defendant wrongly claimed that "speculation and unsupported belief" explains Plaintiff's assertion that records exist. (Dkt. No. 51 at 12). Defendant also wrongly claimed that the Hon. Chief U.S. Magistrate Judge Roanne Mann did not resolve all ambiguities "against Plaintiff." (Dkt. No. 51 at 16). Defendant also claimed that the Court should deny Plaintiff's Motion for Sanctions. (Dkt. No. 51 at 24).

In Plaintiff's Objection, Plaintiff requested a *de novo* review of this case. That means a review from top to bottom, and that includes the decision of the Chief Magistrate Judge's decision to disregard the Second FOIA Request and to address Plaintiff's Motion for Sanctions. "[T]he Court should decline to adopt the Report and Recommendation. Instead, the Court should vacate the reference of the civil matter to the Chief Magistrate Judge, review Plaintiff's motions *de novo*, and sustain Plaintiff's objections and grant Plaintiff's Motion for Partial Summary Judgment and Motion for Sanctions and Penalties." (Dkt. No. 50 at 3) (emphasis

added). Regarding Defendant's claims that "speculation and unsupported belief" explain the existence of records, Plaintiff has demonstrated time and again that records exist. See generally one of Plaintiff's numerous discussions about the legal guidance provided by the U.S. Department of State to Defendant, in accordance with procedures cited in the United States Attorneys' Manual. (Dkt. No. 24 at 17-8, 2, 37). Plaintiff noted the likely existence of other records in Plaintiff's Objection. (Dkt. No. 50 at 12-4, 23, 31). The likely existence of records has been addressed in briefs supporting Plaintiff's motions. Regarding Defendant's plainly wrong assertion that the Chief Magistrate Judge did not resolve all ambiguities "against Plaintiff", Plaintiff made it plainly aware in Plaintiff's Objection that there was no instance in the Report and Recommendation -- not even once -- when the Chief Magistrate Judge resolved any ambiguity in favour of Plaintiff. Up until now, the Report and Recommendation proposes to resolve the dispositive motion practice, as it has been overseen by the Chief Magistrate Judge, and the Report and Recommendation's central failing in this regard speak for itself. In proposing a resolution to the dispositive motions, never did the Chief Magistrate Judge propose to resolve any ambiguity in favour of Plaintiff. If there are examples that Defendant can point to when ambiguities were resolved against Defendant, then Defendant must point those out to Plaintiff and to the Court, and it must do so now, or else abandon this fictitious argument.

It must be noted that Defendant at every opportunity has sought to unduly restrict, narrowly construe, or to fabricate conclusions about the Free Speech FOIA Requests so as to give it a position to use rules lawyering to misinterpret FOIA as a cover for violating FOIA. What is plainly evident, based on the record of these proceedings, is that Defendant has admitted that it waits until the Courts enter Orders compelling the disclosure of records before Defendant produces records. This was shown when Defendant admitted that it has interpreted FOIA to allow Defendant to get away with delayed responses ("If an agency responds to a FOIA request after the initiation of a lawsuit, a claim for relief under FOIA becomes moot upon receipt of the requested documents, despite the delay in the response."). (Dkt. No. 20 at 7). This was further supported by Plaintiff documenting in the record of Defendant's pattern and practice of forcing individuals making requests under FOIA to file lawsuits in order to compel the disclosure of records. (PL 56.1 Answer ¶¶ 84-93). That is what is happening here. This is what is happening now. Because Defendant has failed to introduce evidence about its record of compliance with FOIA to refute Plaintiff's evidence, Defendant's record of noncompliance has been clearly demonstrated for this Court.

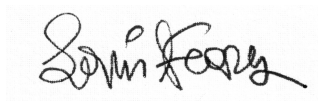
FOIA only practically works when the Government discloses information. Congress enacted FOIA to "ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). Because Defendant has not claimed any Exemptions for the documents withheld from the Red Herring Response ; for the documents that are likely to exist, according to Plaintiff's Index of References to Records Requested Under FOIA Request ; for the U.S. Department of State legal guidance provided to Defendant

or for any records created under those procedures ; and for any other records that are likely to exist, and because Defendant has not shown by *Vaughn* Index that any withheld documents are subject to Exemption, Defendant cannot withhold any documents that exist or are likely to exist. Defendant cannot also withhold its working law. This is settled case law. If there is no disclosure by Defendant of records that exist and that likely exist, then FOIA is not working, and the Court must apply its discretion to compel disclosure.

One day, a regressive administration will come into power over the Federal Government, forcing women to protest over the loss of reproductive rights, forcing the LGBT community to protest for liberation, forcing Blacks and other minorities to protest against police brutality and other forms of discrimination, forcing Jews to protest a rise in anti-Semitism, forcing environmentalists to protest the continued use of fossil fuels, and forcing Government reform activists to demand changes in the law to fight corruption. Key to the public's understanding about how the Government will prosecute these activists for their activism (whilst at the same time respecting, or disrespecting, as the case may be, the First Amendment rights that would govern activists' protest actions) will be whether the Court exercises discretion over the records being requested in this litigation and whether the Court compels Defendant to comply with FOIA.

Please note, the unpublished case law cited by Defendant in Defendant's Response was not electronically provided to Plaintiff, and, due to technical problems with Plaintiff's access to documents filed with ECF, Plaintiff was unable to download Defendant's Notice of Appearance. Plaintiff requested from Defendant copies of the unpublished case law cited in Defendant's Response and of Defendant's Notice of Appearance. However, Defendant denied Plaintiff's request for electronic copies of such documents. This letter reply with prepared without the benefit of such documents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Louis Flores".

Louis Flores
Pro se Plaintiff

cc : [By e-mail only to : rukhsanah.singh@usdoj.gov]

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Attorney for Defendant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LOUIS FLORES,

Plaintiff,

v.

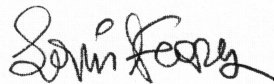
UNITED STATES DEPARTMENT OF JUSTICE,

Defendant.

15-CV-2627 (JG)(RLM)

**AFFIRMATION
OF SERVICE**

I, **LOUIS FLORES**, declare under penalty of perjury that I have served a copy of the attached **PLAINTIFF'S LETTER REPLY TO DEFENDANTS RESPONSE TO PLAINTIFF'S OBJECTION TO REPORT AND RECOMMENDATION** upon **RUKHSANAH L. SINGH**, whose address is : c/o United States Attorney's Office, Eastern District of New York, 271 Cadman Plaza East, 7th Floor, Brooklyn, New York 11201 by **ELECTRONIC MAIL DELIVERY** to : rukhsanah.singh@usdoj.gov.



Dated : Jackson Heights, New York
21 November 2016

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